IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.3560/2007

Jasveer Singh and another.

vs.

State of Rajasthan and others.

Date : 23.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.JL Purohit, for the petitioners.
Mr.K Mathur, for the respondents.

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BY THE COURT :

Though the writ petition is listed in the Court on application under Article 226(3) of the Constitution of India but both the learned counsels for the parties prayed that the matter may be decided finally.

It appears from the order-sheets placed on record by the petitioners (Annexure-7) that the Superintending Engineer was busy in administrative work on 30.4.2007 and before that and on that day itself, the matter was

posted for arguments. On 30.4.2007, the learned Superintending Engineer specifically mentioned that he was busy in the programme of Hon'ble Chief Minister and because of heavy work load, therefore, he could not decide the matter. On the next date i.e. 7.5.2007, the order was pronounced by the Superintending Engineer.

The contention of the petitioners is that the matter was not heard on 30.4.2007 which is apparent from the order-sheet itself. The Superintending Engineer was not in position to hear the arguments because of the reason mentioned in the order dated 30.4.2007 itself. Therefore, the order dated 7.5.2007 passed by the Superintending Engineer was passed without giving opportunity of hearing.

According to learned counsel for the petitioners, because of that reason only, in the order of Superintending Engineer dated 7.5.2007, factual error crept in and that was having material effect on the decision because of the reason that the Superintending Engineer committed error in drawing inference about the flow of water from one side to other side and in fact, he recorded the fact absolutely contrary to the actual position on spot.

Learned counsel for the respondents submitted that in fact, the petitioners alone have raised objection but it is the duty of the respondent Irrigation

Department to see that the respondents also get proper water supply. In view of the above reasons, after thoughtful consideration and after considering the report of Halka Patwari also and after inspecting the site, the order was passed by the Superintending Engineer.

Be that as it may be, the order of Superintending Engineer dated 7.5.2007 (Annex.2) is liable to be quashed only on the ground that the order was passed without giving opportunity of hearing to the petitioners which is apparent from the orders dated 30.4.2007 and 7.5.2007 placed on record by the petitioners.

In view of the above, this writ petition is allowed, the order dated 7.5.2007 (Annex.2) is quashed and set aside and the matter is remanded to the Superintending Engineer for deciding the appeal afresh after giving opportunity of hearing to both the parties.

Both the learned counsels for the parties agree that the date 29.8.2007 may be fixed before the Superintending Engineer.

Both the parties are directed to appear before the Superintending Engineer, Sri Vijaynagar. Copy of this order may be supplied to Superintending Engineer, Sri

Vijaynagar by the parties before 29.8.2007 so that the Superintending Engineer may decide the appeal within a period of 7 days.

The Superintending Engineer is expected to decide the matter without being influenced by any order passed by this Court or any finding recorded by the Superintending Engineer in the earlier order.

(PRAKASH TATIA), J.

S.Phophaliya